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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,562	07/30/2003	Scott Smith	760-12 DIV/CON/RCE	8643
23869 7590 07/09/2008 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
GANESAN, SUBA				
ART UNIT		PAPER NUMBER		
3774				
NOTIFICATION DATE		DELIVERY MODE		
07/09/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Office Action Summary

Application No.

10/630,562

Applicant(s)

SMITH, SCOTT

Examiner

SUBA GANESAN

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 2, 4, 5 and 9-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 6-8, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed 4/2/2008 have been fully considered but they are not persuasive. Applicant argues that Leopold fails to suggest an elongate preformed non-textile planar strip of polymeric graft material, a planar stent attached to the planar graft material to form a flat strip assembly, which is subsequently wound to form the inventive stent graft. Examiner disagrees. Leopold discloses a flat planar strip and stent assembly with a planar non-textile graft. The limitation "subsequently wound to form the inventive stent graft" is a product by process limitation, which is not limited to the manipulations of the recited steps, only the structure implied by the steps (see MPEP 2113). Since the structure of Leopold matches the structure of the claimed invention (in combination with Lau), the rejection is proper. Lau teaches the use of planar stents. The limitation "formed from a flat sheet" is considered to be a product by process limitation.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 6-8, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leopold et al. (U.S. Pat. No.: 6,352,561) in view of Lau et al. (U.S. Pat. No.: 6,165,210).

3. Leopold discloses a stent graft composite device formed from a flat preformed planar strip and stent assembly (see fig. 3) comprising an elongate preformed non-textile planar strip 128 of polymeric graft material (col. 11 lines 13-44) having a first exterior surface and a second opposed luminal surface (see fig. 3). A stent 126 is attached to the luminal surface of the strip, and the strip assembly is helically wound into a continuous tubular structure (col. 9 lines 25-27). Leopold further discloses an embodiment in which successive helical windings do not overlap (fig. 6B). The polymeric graft material includes fluoropolymers and ePTFE (col. 11 lines 13-44). The tubular structure has a generally circular cross section (see fig. 3 and 4A). The stent comprises stent wire (see fig. 3).
4. However, the stent graft assembly of Leopold lacks a planar stent made of planar wire or ribbon. Lau teaches a planar stent, which the examiner considers to be equivalent to a planar ribbon stent (figs. 6,7,9,10). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to include a planar stent, as taught by Lau, with the stent-graft composite of Leopold, the motivation to combine being: providing a stent with a greater surface area to promote attachment to the helically wound graft material.
5. Examiner considers such a modification to be within the skill of an ordinary worker in the art, since in addition to the motivation provided above, the resulting stent-graft composite of Leopold and Lau would constitute a combination of prior art elements, combinable using known methods and yielding predictable results.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUBA GANESAN whose telephone number is (571)272-3243. The examiner can normally be reached on M-F 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. G./

Examiner, Art Unit 3774

/William H. Matthews/

Primary Examiner, Art Unit 3774